

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2781

Introduced by Assembly Member Leno

February 24, 2006

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 2781, as amended, Leno. Child support collectors.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or *an* earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would also require that every court order for child support issued on or after ~~July 1, 2007~~ *January 1, 2008*, and every child support agreement providing for the payment of child support approved by the court on or after ~~July 1, 2007~~ *January 1, 2008*, include a separate obligation owed by the child support obligor to pay 1/2 of the fee charged by a private child support

collector, as specified. This obligation would have the force and effect of a money judgment in favor of the private child support collector and the child support obligee, jointly. *The bill would also establish requirements relating to the compensation of attorneys who are private child support collectors.*

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 5610) is added to Part 5 of Division 9 of the Family Code, to read:

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. (a) For the purposes of this section, “private child support collector” means any individual, corporation, attorney, nonprofit organization, or other nongovernmental entity who is engaged by an obligee to collect child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in post judgment or modification proceedings related to any of those actions. A “private child support collector” includes any private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support. As used in this subdivision, “substantially” means that at least 50 percent of the attorney’s business, either in terms of remuneration or time spent, is comprised of the activity of seeking to collect or enforce child support obligations for other individuals.

(b) Any contract for the collection of child support between a private child support collector and an obligee shall be written in simple language, in at least 10-point type, signed by the private child support collector and the obligee. The contract shall be delivered to the obligee in a paper form that the obligee may

1 retain for his or her records. The contract shall include all of the
2 following:

3 (1) An explanation of the fees imposed by contract and
4 otherwise permitted by law and an example of how they are
5 calculated and deducted.

6 (2) A statement that the amount of fees to be charged is set by
7 the agency and is not set by state law.

8 (3) An explanation of the nature of the services to be provided.

9 (4) The expected duration of the contract, stated as a length of
10 time or as an amount to be collected by the collection agency.

11 (5) An explanation of the opportunities available to the obligee
12 or private child support collector to cancel the contract or other
13 conditions under which the contract terminates.

14 (6) The mailing address, street address, telephone numbers,
15 facsimile numbers, and Internet address or location of the private
16 child support collector.

17 (7) A statement that the private child support collector is not a
18 government entity and that government entities in California
19 provide child support collection and enforcement services free of
20 charge.

21 (8) A statement that the private child support collector collects
22 only money owed to the obligee and not support assigned to the
23 state or county due to the receipt of CalWORKs or Temporary
24 Assistance to Needy Families.

25 (9) A statement that the private child support collector will not
26 retain fees from collections that are ~~almost completely~~ *primarily*
27 attributable to the actions of a government entity or any other
28 person or entity and is required by law to refund any fees
29 improperly retained.

30 (10) A statement that the obligee may continue to receive, or
31 may pursue, services through a government entity to collect
32 support, and the private child support collection agency will not
33 require or request that the obligee cease or refrain from engaging
34 those services.

35 (11) A notice that the private child support collector is
36 required to keep and maintain case records for a period of four
37 years and four months, after the expiration of the contract and
38 may thereafter destroy or otherwise dispose of the records. The
39 obligee may, prior to destruction or disposal, retrieve those
40 portions of the records that are not confidential.

(12) A “Notice of Cancellation,” which shall be included with the contract and which shall contain, in the same size font as the contract, the following statement, written in the same language as the contract:

“Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within 15 business days from the date the contract is signed or you receive this notice, whichever is later, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor, or _____ (all other reasons for cancellation permitted).

To cancel this contract, mail or deliver a signed copy of this cancellation notice or any other written notice to _____ (name of private child support collector) at

_____ (address for mail or delivery) no later than midnight on _____ (date).

I am canceling this contract. _____ (date)

_____ (signature)”

(13) (A) Each private child support collector shall make the following disclosure in any advertisement, commercial, or other solicitation:

“(Name of private child support collector) is a private child support collector and not a governmental entity. (Name of private child support collector) charges a fee for services provided.”

(B) The disclosure required by subparagraph (A) shall be printed in every written advertisement and solicitation as follows:

(i) In a type size that is at least equal to one-quarter of the largest type size used in the solicitation to advertise the collection service. In no event shall the disclosure be printed in less than 8-point type.

(ii) In the same style and color of type used to advertise the collection service.

(iii) Immediately above, below, or beside the advertised fee without any intervening words, pictures, marks, or symbols.

(iv) In the same language as the advertisement.

(C) The disclosure required by subparagraph (A) shall be broadcast in every radio or television advertisement and

1 solicitation. For broadcast advertisement of 30 seconds or less,
2 the disclosure may be shortened as follows:

3 “(Name of private child support collector) is not a
4 governmental entity, and charges a fee for its services.”

5 (D) This section shall apply to an advertisement, commercial,
6 or solicitation in English or any other language.

7 (c) (1) An obligee shall have the right to cancel a contract
8 with a private support collector within 15 business days of the
9 later of signing the contract, or receiving a blank notice of
10 cancellation form, or at any time if the private child support
11 collector commits a material breach of any provision of the
12 contract or a material violation of any provision of this chapter
13 with respect to the obligee or the obligor.

14 (2) A contract shall automatically terminate when the contract
15 term has expired or the contract amount has been collected,
16 whichever occurs sooner.

17 (3) ~~A contract shall terminate~~ *An obligee shall have the right*
18 *to cancel a contract with a private child support collector* at the
19 end of any 12-month period in which the total amount collected
20 by the private child support collector is less than 50 percent of
21 the amount scheduled to be paid under a payment plan.

22 (4) No private child support collector shall take an assignment
23 of the support obligation.

24 (5) The private child support collector may ~~not collect on,~~
25 *subject to all limitations provided for in the contract, collect the*
26 *greater of the following:*

27 (A) *The proceeds from a withholding order for child support*
28 *only if that order has been in effect with the same employer for*
29 *less than six months and or has yielded less than six months’ of*
30 *withholding order payments.*

31 (B) *The actual costs established by the private child support*
32 *collector to collect the proceeds of the withholding order.*

33 (6) The private child support collector may not collect on
34 current child support payments.

35 (7) A private child support collector that improperly retains
36 fees from collections that are ~~almost completely~~ *primarily*
37 attributable to the actions of a government entity or to any other
38 person or entity shall refund all of those fees to the obligee
39 immediately upon discovery or notice of the improper retention
40 of fees.

1 (d) (1) A private child support collector shall provide to an
2 obligee all of the following information:

3 (A) The name of, and other identifying information relating to,
4 any obligor who made child support payments collected by the
5 private child support collector.

6 (B) The amount of support collected by the private child
7 support collector.

8 (C) The date on which each amount was received by the
9 private child support collector.

10 (D) The date on which each amount received by the private
11 child support collector was sent to the obligee.

12 (E) The amount of the payment sent to the obligee.

13 (F) The source of payment of support collected and the actions
14 affirmatively taken by the private child support collector that
15 resulted in the payment.

16 (G) The amount and percentage of each payment kept by the
17 private child support collector as its fee.

18 (2) The information required by paragraph (1) shall either be
19 made available, at the option of the obligee, by mail, telephone,
20 or via secure Internet access. If provided by mail, the notice shall
21 be sent at least quarterly. Information accessed by telephone and
22 the Internet shall be up to date.

23 (e) (1) A private child support collector shall maintain records
24 of all child support collections made on behalf of a client who is
25 an obligee. The records required under this section shall be
26 maintained by the private child support collector for the duration
27 of the contract plus for a period of four years and four months
28 from the date of the last child support payment collected by the
29 private child support collector on behalf of an obligee. In
30 addition to information required by subdivision (d), the private
31 child support collector shall maintain the following:

32 (A) A copy of the order establishing the child support
33 obligation under which a collection was made by the private
34 child support collector.

35 (B) Records of all correspondence between the private child
36 support collector and the obligee or obligor in a case.

37 (C) Any other pertinent information relating to the child
38 support obligation, including any case, cause, or docket number
39 of the court having jurisdiction over the matter and official

1 government payment records obtained by the private child
2 support collector on behalf of, and at the request of, the obligee.

3 (2) A private child support collector shall safeguard case
4 records in a manner reasonably expected to prevent intentional or
5 accidental disclosure of confidential information pertaining to the
6 obligee or obligor, including providing necessary protections for
7 records maintained in an automated system.

8 (3) Every person who contracts with a private child support
9 collector shall have the right to review all files and documents,
10 both paper and electronic, in the possession of the private child
11 support collector regarding that obligee's case that are not
12 required by law to be kept confidential. The obligee, during
13 regular business hours, shall be provided reasonable access to
14 and copies of the files and records of the private child support
15 collector regarding all moneys received, collection attempts
16 made, fees retained or paid to the private child support collector,
17 and moneys disbursed to the obligee. The private child support
18 collector may not charge a fee for access to the files and records,
19 but may require the obligee to pay up to three cents (\$.03) per
20 page for the copies prior to their release.

21 (f) A private child support collector shall not do any of the
22 following:

23 (1) Collect or attempt to collect child support by means of any
24 conduct that is prohibited of a debt collector collecting a
25 consumer debt under Sections 1788.10 to 1788.16, inclusive, of
26 the Civil Code.

27 (2) Misstate the amount of the fee that may be lawfully paid *to*
28 the private child support collector for the performance of the
29 contract or the identity of the person who is obligated to pay that
30 fee.

31 (3) Make a false representation of the amount of child support
32 to be collected. A private child support collector is not in
33 violation of this paragraph if it reasonably relied on evidence
34 provided by the government entity collecting child support, a
35 court with jurisdiction over the support obligation, or from the
36 obligee, or upon proof provided by the obligor.

37 (4) Ask any party other than the obligor to pay the child
38 support obligation, unless that party is legally responsible for the
39 obligation or is the legal representative of the obligor.

(5) On or after January 1, ~~2006~~ 2007, no private child support collector may require, as a condition of providing services to the obligee, that the obligee waive any right or procedure provided for in any state law regarding the right to file and pursue a civil action, *or that the obligee agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California*, as provided by law. Any waiver by the obligee of the right to file and pursue a civil action, *the right to file and pursue a civil action in California, or the right to rely upon California law* as provided by law must be knowing, voluntary, and not made a condition of doing business with the private child support collector. Any waiver, including, but not limited to, an agreement to arbitrate *or regarding choice of forum or choice of law*, that is required as a condition of doing business with the private child support collector, shall be deemed involuntary, unconscionable, against public policy, and unenforceable. The private child support collector has the burden of proving that any waiver of rights, including any agreement to arbitrate a claim *or regarding choice of forum or choice of law*, was knowing, voluntary and not made a condition of the contract with the obligee.

(g) (1) A person may bring an action for actual damages incurred as a result of a violation of this section.

(2) In addition to actual damages, a private child support collector who willfully and knowingly violates the provisions of this section shall be liable for a civil penalty in an amount determined by the court, which may not be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(3) A person who prevails in an action brought pursuant to this section is entitled to recover court costs. Reasonable attorney's fees shall be awarded to a prevailing obligee or obligor. On a finding by a court that an action pursuant to this section was brought by an obligee or obligor in bad faith or for purposes of harassment, the court shall award the private child support collector attorney's fees reasonably related to the work performed and costs.

(4) A private child support collector is not in violation of this section if the private child support collector shows, by a preponderance of the evidence, that the action complained of was not intentional and resulted from a bona fide error that occurred

1 notwithstanding the use of reasonable procedures to avoid the
2 error.

3 (5) The remedies provided in this subdivision are cumulative
4 and are in addition to any other procedures, rights, or remedies
5 available under any other law.

6 (h) Any waiver of the rights, requirements, and remedies
7 provided by this section violates public policy and is void.

8 (i) Every court order for child support issued on or after ~~July~~
9 ~~1, 2007~~ *January 1, 2008*, and every child support agreement
10 providing for the payment of child support approved by a court
11 on or after ~~July 1, 2007~~ *January 1, 2008*, shall include a separate
12 obligation owed by the child support obligor to pay one-half of
13 the fee charged by a private child support collector pursuant to a
14 contract complying with the requirements of this section and any
15 other child support collections costs expressly permitted by the
16 child support order. The obligation to pay half the fee shall have
17 the force and effect of a money judgment in favor of the private
18 child support collector and the child support obligee, jointly. The
19 obligation to pay the fee may be enforced by the private child
20 support collector by any means available to the obligee for the
21 enforcement of the child support order without any additional
22 action or order by the court, however, the fee does not constitute
23 child support.

24 (j) If the child support order makes the obligor responsible for
25 payment of collection fees and costs, fees that are deducted by a
26 private child support collector may not be credited against child
27 support arrearages or interest owing on arrearages or any other
28 money owed by the obligor to the obligee.

29 (k) If the order for child support requires payment of
30 collection fees and costs by the obligor, then not later than five
31 days after the date that the private child support collector makes
32 its first collection, written notice shall be provided to the obligor
33 of (1) the amount of arrearages subject to collection, (2) the
34 amount of the collection that shall be applied to the arrearage,
35 and (3) the amount of the collection that shall be applied to the
36 fees and costs of collection. The notice shall provide that, in
37 addition to any other procedures available, the obligor has 30
38 days to file a motion to contest the amount of collection fees and
39 costs assessed against the obligor as well as the amount of the
40 arrearages subject to collection.

1 *(l) Notwithstanding any other provision of this section,*
2 *including provisions establishing a right of cancellation and*
3 *requiring notice thereof, any contract for the collection of child*
4 *support between an attorney who is a “private child support*
5 *collector” pursuant to subdivision (a) shall conform to the*
6 *statutes, rules, and case law governing attorney conduct,*
7 *including the provisions of law providing that a contract with an*
8 *attorney is cancelable by the attorney’s client at any time. Upon*
9 *cancellation of that contract, the attorney may seek*
10 *compensation as provided by law, including, where applicable, a*
11 *claim for the reasonable value of any services rendered to the*
12 *attorney’s client pursuant to the doctrine of quantum meruit,*
13 *provided those services lead to the collection of support and the*
14 *compensation is limited to what would have been collected had*
15 *the contract been in effect. To the extent that the provisions of*
16 *this section are in conflict with the provisions of state law*
17 *governing the conduct of attorneys, the more specific law shall*
18 *control. If there is no conflict, an attorney who is a “private child*
19 *support collector” pursuant to subdivision (a) shall conform to*
20 *the provisions of this section.*